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Supreme Court-In Banco. JANUARY TERM, 1871. ALLEN, C. J., HARTWELL, J., WIDEMANN, J.

Estate of Hannah Maughan, Deceased. Intestate. By the judgment of the majority of the Court articles of adoption have not the effect of making the adopted child on heir

ALLEN, c. J. : The Appellant was adopted as the child of Hannah Manghan by the articles of agreement as follows, viz.:

" Articles of agreement made and concluded this twenty-seventh day of August. A. D. 1853, between Moewale, the father and only surviving parent of Pauahi, a female child about thirteen years old, and Hannah Manghan, of Honolula, witnesseth : That the said Mocwale does hereby g quantities to suit purchasers by AFONG & ACHUCK. give unto the said Hannah Manghan, his child the said Pauahi, to be adopted by her as her own child, and doth release all control and right over the said child unto the said Hancah Maughan, in COMING IN. FOR SALE IN QUANTITIES consideration of the covenants hereinafter entered into by the said Hannah Maughan, and the said Hannah Maughan agrees to adopt the said Pauahi as her own child, and to clothe, educate, and in every way care for the said child as becomes the COMING IN, FOR SALE IN QUANTITIES duty of a good parent. As witness our hands and seals the day and year first above written.

> (Signed) MOEWALE. HANNAH MAUGHAN." (Signed) Which were duly acknowledged and recorded as follows, viz. : " Personally appeared before me the above-named Moewale and Hannah Manghanand scknowledged that they had executed the written instrument for the purposes therein mentioned. In witness whereof I have hereunto set my hand and caused to be affixed the Seal of the

> Supreme Court, at Honolulu, Oahu, this 27th day of August, A. D., 1855. G. M. Robertson, Associate Justice of the Supreme Court."

" REGISTRAR'S OFFICE. Honolulu, July 19th, 1869. "I hereby certify that the foregoing is a true and correct copy of an instrument on record in this office in liber 6, on pages 769 and 770, of

THOMAS BROWN, Registrar of Conveyances." And the question is, has she, by virtue of this

Miscellaneous Records.

greement, any rights of inheritance? Had it been expressly stated that the child should inherit, it is admitted by one of my Associates that such stipulation would have enabled her to do so. There can be no doubt that there was an adoption, which was recognized in ancient times as giving the right of inheritance. It was very wisely determined by the Legislature that this relationship, which was regarded by the Hawaiians as very sacred, should be established in writing, so that it should not depend on testi-

In the case of Abenela vs. Knilikole, Vol. 2, Hawshan Rep., 660, the Court say, "that all agreements of adoption, which are of great importance as affecting the rights of property, GENT of Bremen Board of Underwrites, should be made in writing and duly recorded, and as no compliance with this requirement has been shown in the present case, the plaintiff can not prevail." It was very clearly the opinion of the Court, that had the adoption been made in writing, the party would have inherited. Now in this case the person was adopted, and is entitled to all the rights of an adopted child as understood. It is very true that "the terms of the adoption must be definitely stipulated in the agreement." I regard the stipulation as conveying the rights of inheritance, when it declares that "the said Hannah Maughan agrees to adopt the said Pauahi as her own child, and to clothe, educate, and in every way care for the said child as becomes

> Now, under the laws of inheritance everywhere, one's own child inherits the estate of the parent, as in our own Code. Js it caring for the child as becomes the duty of a good parent, to leave the child without some suitable provision? Had that been the law as understood by the purents, there can be no doubt that some provision would have been made for her.

I regard the meaning, "adopted child," as sy-

the duty of a good parent."

when a Statute declares that the property shall be divided equally among the intestate children. is an heir because he, his adopters, or his natural very elaborately upon the unjust consequences based on the laws of this Kingdom. which will result to collateral blood relatives, if This is not a case in which any custom is citful as if it was their own by blood.

pure question of law, and of right under it. I therefore dissent from the decision made by a majority of the Court.

tioner. The intestate had, previous to this adoption, inherited certain property as devisee under the will of her busband, Capt. Joseph

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Manghan. The Court granted no administration there appearing to be no sufficient cause therefor, but made an interlocutory decree, Nov. 10, 1869, that " the petitioner is not entitled to the said estate by virtue of the said written articles of adoption, but that the contestant, Nancy Wirt, was the intestate's sole heir at law." From this raling, made by Hartwell, J., in probate, appeal was taken to this Court in benco, and heard | not inherit to the exclusion of legitiments heirs at last January Term.

In view of the importance of the questions thus presented, I have carefully reviewed and reconsidered my first impression on them, and such further arguments as have been presented; but the reasons which then convinced me still apply, and I am unable to find any reason, resting in law, for sustaining the doctrine that articles of adoption are equivalent to wills, nor can I find any law, or statute, whereby adopted children inherit as do legitimate children of the blood.

Before coming to the main question, I can not refrain from expressing my entire uncertainty of the jurisdiction of this Court to make a decree of general heirship in any case, except collaterally in deciding on the right to administer, or on the distribution of personalty left in the administrator's hands, or in the various collateral forms in which such questions may arise, as for instance in proving title in an action of ejectment or suit in Equity. The Constitution limits the judicial power to "cases in law and equity arising under the Constitution and laws of this Kingdom." The probate powers of this Court are found in Statutes which authorize the appointment, removal, and supervision of executors, administrators and guardians, the admeasurement of dower and partition of real estate, and to " do all such other acts as may be necessary to carry into full effect all the powers which are or may be granted to it by the Constitution and laws of the Kingdom." None of these probate powers expressly or by implication authorize a general decree of heirship. Even the general equity power of Quica Timet, or of Injunctions in Bills of Peace,

to quiet titles, appears to exist in other countries only by Statute, in cases where there are no actual claimants. I regard this as one of the most serious questions for the Legislature, in order that a sure, definite and certain procedure may be fixed whereby titles in land may be adjudicated and settled finally. But the point of jurisdiction is not presented, and is suggested merely from a hope that at the approaching session of the Assembly, the diversity of view on this matter may be set at rest by Statute. In regard to rights by inheritance, they are fixed and ascertained, in other words they exist

cuted under which such rights are claimed, and in either case they are such rights only as are defined by the statute law of the realm. If a person claim to be heir at law of one deceased intestate, of course the claim can not be made before the ancestor's death, so that it may appear what heirs survive. If he claim under a written instrument, that instrument can be nothing more must conform to all the statute requirements of a will, regardless of the wishes, views or expectations of those who executed or are interested in the instrument. A document drawn and executed in all respects as a will, but with only one subscribing witness, is utterly worthless for the purpose of a will or for any purpose, and this is in spite of the intention of parties however clearly expressed, and for the simple reason that such is statute law of the land. Whatever the ancient or the present customs or ideas of natives of this Kingdom on the subject of adopting children, fathers or mothers, and I may add in regard to relations between the sexes, once recognized by custom and not prohibited, but which are no longer legitimate, such customs and ideas can not prevail against our Statutes of wills, which prescribe what constitutes a will, and of descents, prescribing all the inheriting relations but not mentioning adoption. An adopted father is as much an own father, in the native mind, as nonymous with child, in its legal effect. As an adopted child, but neither is an heir at law. It is not enough to say that an adopted child

it includes all children, whether by adoption or parents think he is so, for they do not make the THE UNDERSIGNED having been apan express provision for each. What can be more made such, (i. e., by last will,) and those born expressive than the language used in these such (i. e., heirs at law.) If adopted children articles, that the said Hannah Manghan agrees were beirs at law, the Statutes would be strangely to adopt the said Paushi as her own child? An and unfortunately defective, in fulling to provide own child " inherits under the law, why then for the heirs of the adopted child-its own blood should not the child adopted as an own child heirs, or its adopted parents' blood heirs. If the inherit? In view of the customs and usages of heirs of the adopted child succeed, the property the Hawaiians in relation to adopted children, of the adopting family is diverted from its blood, and in view of the express language of the and if the heirs of the adopters succeed, then articles of agreement, can there be a doubt that the property of the child's kindred is diverted, when they speak of their children, they include and in either case the Statute of descents would those adopted as well as those by blood? Hence be set saide. By that Statute, on failure of t was not regarded as n-cessary to be so explicit. kindred, the personal property eschents to the as is here contended. It could not have been the Government, and the land reverts to the owner idea of Mrs Manghan, that the moment she died of the Ahapuna; if there be no issue, which the the person whom she had adopted as her own | Statute defines as " lineal descendants," one half child, should be houseless and homeless. That of the estate goes to the widow and one half to was not the idea of the Hawaiians, and it was his father and mother. The Statute is explicit, not, as I think, the idea of the Legislators when that the property of the intestate " shall descend they made that provision that the articles of to and be divided among his heirs as hereinafter adoption should be in writing. The object was prescribed." "If he leave no widow nor issue, to make the relationship clear and well defined, the whole shall descend to his father and mother." and my own counion is, that if a child is adopted - If he shall leave no issue nor father nor mother, as one's own, it is adopted for all good purposes. his estate shall descend one half to his widow and that the important one of inheritance is se- and the other half to his brothers and elstern." cured. The counsel for the contestant has argued To these statute claims no denial can be made

this principle of adoption obtains. Every person leged as having the force of law, and if alleged, has a right to dispose of his property as he it could have no force in the face of explicit pleases, under the law, and he has a right to statute provisions. No law makes so adopted adopt a child, and secure his property to that child an heir, and to say that an agreement of and Manila CICARS! child. Usually, I suppose, persons adopt a adoption has the force of a testamentary set, is THE BEST SMOKING AND CHEWING child when they have none of their own. In in- both to presume, what is not shown to be stances of this kind, the affections of the persons | the truth, that such was the intention of such who adopt become as much interested in the agreement, and also that the intention of parties shall prevail against the Statute of wills; and It is not a question of consequences, but a further, it is saying that whenever the Legislature speaks of children generally, they do not mean legitimate issue, but adopted children as well. Again, this agreement stipulates that "the

HARTWELL, J.: The petition of Paushi and said Hannah Manghan agrees to adopt the said or connection, with the exception of the peti- Laws 1846, Vol. 1, p. 198. Is the most important | so badly that she died.

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item of all, that the adopted child shall inherit its adopter's estate, to be left to inference, as against statute rights of heirs at law? The expressed statute right of the adopted child is found in the provision that his adopter is " liable from the day of adoption to all parental duties and obligations." Ibid. To make even a legitimate child an beir is neither legally nor morally a parental duty. Neither the agreement nor the Statute makes the adopted child an heir. Own children, meaning issue of the blood, even, can It is true that articles of adoption are required now, by special Statute, to be written; but the Statute of Francis would have required a written memorandum of such agreement, and the writing adds no new force to the agreement itself.

Finally, in regard to decisions of this Court supposed to affect this question: In the Ah Chu case, there was a will. In the Abenela case, which was merely at nisi print, without argument, a claim under adoption was rejected for want of a written agreement, and the Court there go on to intimate obiter that if the agreement were in writing, it would have the effect of a will. But no opinion was given or required on

In the case of the Estate of His late Majesty Kamehameha IV., the Court, in Sauco, say, that Liholiho would have been "entitled as the adopted son to inherit," even if he had not taken under a will. But this also is a mere obiter dicturn, and is hardly reconcilable with the actuadecision explained by their subsequent remark, that the descent of the rest of the property (not reserved to the Crown,) "must be governed by the general law of inheritance and distribution and Her Majesty Queen Emma is therefore entitled as statutory heir to one helf." This last point was decided, and the decision I regard a binding and conclusive in the present case as against any but statutory heirs.

For these reasons, I think the appellant is not the beir whom the Court can or the law does recognize, and that the sister, Mrs. Wirt, as sole surviving heir, is entitled to take under the Statutes of descent and distribution.

WIDEMANN, J.: It seems clear to me that the written articles of adoption, without any further evidence of the intentions of the adopter, are insufficient under the law and statutes of the land to establish a title to inheritance for the adopted

I think therefore that the claim of the adopted child in this case should be rejected.

ILLEGIBLE STONATURES .- What a silly pedantry that is that induces some little people to sign their names so that no one can decipher them. If anything that a man puts upon paper ought to be bold and unmistakable, it is his signature.

The habit of signing with a hieroglyph sprang up with people in high places-no credit to them -and those in lower places contracted it in sping their betters as usual, and thereby honoring the character inherited from their Darwinian pro-Scores of letters from conspicuous nobodies

come under the eye, wound op with a conglomeration of dashes and flourishes, that supposing then to be excusable as the signs manual of bishops and first lords, are absurd as the superscriptions of people of no note. The culminating point of inconsistency is reached when the name is written so vilely that the writer has to enclose his card to tell you what it really is. Often the body of a letter thus signed is legible enough, showing that the correspondent has learned to write properly, and that his scrawly signature is a mere

It may be said that the hieroglyph prevents forgery; but this is a bad argument, for the more complicated a writing the ensier can it be imitated. Far more difficult is it to counterfait a sien ple hand which bears, as all simple hands do bear, a character peccliar to him who wrote it.

The habit is quite unpardonable; and a man

who puts a puzzle in the most important part of

his epistle night never to be disappointed if he gets no answer; for the time that could be given to a reply may be completely used up in disentangling the web that shrouds the name. cient invention is that of the needle. Whother the credit of this invention is due to Adam and Eve, we know not, but we do know that the

Bible says "they sewed fig-leaves together and

made themselves aprons." To sew without a

needle would be an impossibility—therefore they

must have invented one; but whether from a

thorn, shay-stick or fish-bone, is a matter of How ancient, then, is the trade of dressmaking, and when we look at the fashionably-dressed women of to-day, and reflect that all their dress, finery, &c., are the result of the combined thought, industry and pereseverance of dressmakers for nearly six thousand years, is it to be rondered that she is fearfully and wonderfully

To Nosh is attributed the invention of wine, 2347 B. C. Ale was known at least 464 B. C. and beer is mentioned by Xenophon 401 B. C. Backgammon, the most ancient of all our games, was invented by Palamedes, of Greece, 1224 B. C. Chess is of later date, and originated 680 years before the Christian Era.

The first circus was built by Tarquin, 605 B. C., and theatrical representations took place as long ago as 562 B. C. The first tragedy was written by Thespis, 556 B. C. So it seems the ancients were not so destitute of amusement as one would suppose. Is it not possible that the philosopher Socrates delighted in chees; that Sophocles amused his little friends by taking them to see the gladiators and trgedians, and that even lmmortal Homer could play a fair game of back-

A sice young man at Portland kept holding into the window of a married lady until he mw her shake her handkerchiet, when he called at her room. After being picked up at the bottom of the stairs, and having his bones set, it was explained that she was only shaking some apple poelings from a napkin.

A works in Memphis, Tenu., recently got husband for administration on this estate, by Panuhi as her own child, and to clothe, educate, into a fight with her husband, and while in the virtue of written articles of adoption executed and in every way care for the said child as be- set of throwing a pop bottle at him, hit a lighted in 1855 between her father and the intestate, comes the duty of a good parent." The Statete lamp exspended from the ceiling, and emptied was contested by Mrs. Nancy Wirt, the in- prescribes that "the terms is the adoption must the burning fluid all over her, which, in spite of testate's sister and sole surviving blood relative be definitively stopulated in the agreement." his magnanimous efforts to prevent it, injured her